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## CHAPTER XIX

### SOCIAL AND ECONOMIC CONDITIONS OF THE ROMAN EMPIRE IN THE FOURTH CENTURY

THE ancients saw in the stupendous destiny of the Roman State the clue to the history of the Universe and a revelation of the plans of Providence in regard to the world. "Italy," wrote Pliny the elder in the time of Vespasian, "has been selected by Deity in order to collect dispersed power, to soften customs, and to unite by the communion of one language the various and barbarous dialects of so many nations, to bestow on men the intercourse of ideas and humanity, in a word — that all the races of the world should have one fatherland" (*Hist. Nat.* III. 6). For Christians the conquest of the world by Rome had even a deeper meaning. "Jesus was born in the reign of Augustus, who as it were associated in one monarchy the immense multitude of men dispersed about the earth, because a plurality of kingdoms would have been an obstacle to the diffusion of Christ's doctrine through the whole world" (Origen, *c. Celsum*, II. 30). But Augustus was a heathen and his successors persecuted Christianity, so that the Roman Empire served the Gospel for a long while unconsciously and in spite of its desires. This conception of universal history made a further stride when Constantine the Great proclaimed Christianity the religion of the State. "In ancient times," says Eusebius of Caesarea, "the world was divided according to countries and nations into a multitude of commonwealths, tyrannies, principalities. Hence constant wars and the devastations and depredations following thereon. . . . The origin of these divisions may certainly be ascribed to the diversity of the gods worshipped by men. But when the instrument of salvation, the most holy body of Christ . . . was raised . . . against the demons, forthwith the cause of demons has vanished and states, principalities, tyrannies, commonwealths have passed away. . . . One God has been announced to the whole of mankind, one empire obtained sway over all men — the Roman Empire" (Eusebius, *Panegyric of Constantine*, c. 16).

But the unification of the inhabited world (*οικουμένη*) which forms the meaning and the greatness of the Roman Empire, is a process pre-

senting two different sides to the observer. Kelts, Iberians, Rhaetians, Moors, Illyrians, Thracians were to some extent civilised by the culture of Greece and Rome, and achieved by its help a great advance in economic and civic organisation as well as in education; Syrians, Egyptians, the inhabitants of Asia Minor only modified to a certain extent their manners and views in order to meet the requirements of the Empire. But if the intermixture of tribes and their permeation by Graeco-Roman culture was in one sense a great progress, it was at the same time, but from another point of view, a decline; it was accompanied by a lowering of the level of the culture which exerted the civilising influence. While conquering barbarism and native peculiarities, Graeco-Roman culture assumed various traits from its vanquished opponents, and became gross and vulgar in its turn. In the words of a biographer of Alexander Severus: good and bad were promiscuously thrust into the Empire, noble and base, and numbers of barbarians (*Hist. Aug. Alex. Sev.* 64).

The unification and transformation of tribes standing on low grades of civilisation leads to consequences characterised by one common feature, the simplification of aims — degeneration. This process is concealed for a while by the political and economic advantages following on the establishment of the Empire. The creation of a central authority, upholding peace and intercourse (*Pax Romana*), the conjunction of the different parts of the world into one economic system enlivened by free trade, the spread of citizenship and civil culture in wider and wider circles of population — all these benefits produced for a time a rise of prosperity which counterbalanced the excess of barbarous, imperfectly assimilated elements.

But a series of political misfortunes set in rather rapidly in the third century: invasions of barbarians, conflicts between rival candidates to the throne, competition between armies and provinces put an end to order and prosperity and threatened the very existence of the Empire. In these calamities the barbarisation of Roman culture became more and more manifest, a backward movement began in all directions, a backward movement, however, which was by no means a mere falling back into previous conditions, but gave rise to new and interesting departures.

It suffices to glance at the names of the Roman citizens of the Empire in order to notice that we are in very mixed company. Instead of the *nomina* and *cognomina* of earlier days we find strange barbaric appellations hardly whitewashed by the adjunction of *us* or *er* at the end. A T. Tammonius Saeni Tammoni filius Vitalis, and a Blescius Diovicus do not look very pure "Quirites." Such barbarians had first of all to learn Latin as the common tongue of the Western Empire, and they did learn to use Latin. But what Latin! As St Jerome has it: "Latin language gets transformed according to countries and to epochs." Common speech, the *lingua vulgaris*, with a former Kelt, Iberian, or Rhaetian

became gradually a new Romance language, the sounds and forms of which were deflected from the original Latin in consequence of the physiological and intellectual peculiarities of Kelts, Iberians, Rhaetians.

We may be allowed to give a few instances of this curious process of transformation from the well-known history of French phonetics and grammar. The Latin *u* was kept up in Italian but softened into the French *u* (*ü*), *e.g.* *durus* — *duro* — *dur*, and we cannot wonder at that, because the population of Gaul when yet speaking Keltic sounded *u* as *ü* and not somewhat like the English *oo* in "poor." The French "*liaison*," the habit of sounding the otherwise mute consonant at the end of a word before a vowel in order to avoid a "*hiatus*," may be traced to the Keltic habit of joining separate words into compounds. In Keltic dialects the accent makes one or the other syllable so prominent that other syllables become indistinct and may get slurred over. This stress put on the accentuated syllable has called forth in French a characteristic deterioration of unaccentuated parts of words. Sometimes whole groups of sounds disappear, as in "*Août*" (*Augustus*), sometimes they are represented only by a mute *e* as in "*vie*" (*vita*). The French habit of marking the last syllable by an accent even in the pronunciation of Latin goes back ultimately to this trait. In reading the Latin text of the Salic Law we are struck by the complete dislocation of the system of declensions — the ablative case is constantly used instead of the accusative, the accusative instead of the nominative, etc. But this degeneration was prepared by the practice of vulgar Latin even in the first and second centuries when the genitive case disappeared. The dative followed suit somewhat later.

It is not however to be supposed that Latin was imposed even in its vulgarised forms on the entire population of the Empire. It is needless to remind the reader of the fact that in the whole eastern half Greek was the language of the educated classes. But both in the East and in the West there were many backward regions in which vernacular speech held its own stubbornly against Greek and Latin. The Copts, Arabs, Syrians, Armenians never gave up their native languages, and the oriental undercurrents continued to play an important part in the social life of Asia and Egypt. There are many vestiges of a similar persistency of barbarian custom and speech in the West. Roman law admitted expressly that valid deeds could be executed in Punic and, judging from the story about a sister of Septimius Severus, Punic must have been very prevalent among well-to-do families of knightly rank in Africa: when the lady in question came to visit her brother in Rome, the Emperor had often to blush on account of her imperfect knowledge of Latin. The letters and sermons of St Augustine shew that this state of things had by no means disappeared in romanised Africa in the fifth century: the great African bishop repeatedly urged the necessity for dignitaries of the Church to be acquainted with Punic, and he had

recourse himself to illustrations drawn from this language. In Spain and Gascony one living remnant of pre-Roman civilisation has survived to our days in the "Es-c-aldunac" speech of the Basques, the offspring of the Iberian race, while Brittany exhibits another block of pre-Roman custom in the speech and manners of its Breton population. St Jerome testifies to the fact that in the neighbourhood of Trèves, one of the mightiest centres of Roman civilisation, a Keltic dialect was spoken by the peasants in the fourth century, so that a person reared there possessed a clue to the speech of the Galatians, the Keltic tribe of Asia Minor. In the Latinised north-west of the Balkan peninsula the vernacular Illyrian was never driven out or destroyed, and the present speech of the Albanians is directly derived from it in spite of a sprinkling of Latin words and expressions. In the west of England Keltic speech and custom runs on uninterruptedly through the ages of Roman, Saxon, and Norman conquest. Not to speak of Welsh, which has borrowed many Latin words, especially technical terms, but remains a purely Keltic language, Cornish was spoken in Cornwall up to the eighteenth century, while in Cumberland and Westmorland the custom of shepherds to count their sheep in Keltic numerals was the last vestige of the separate existence of a "Welsh" population.

These traces of stubborn national life forming a kind of barbarian subsoil to Roman culture are important in many ways: they help us not only to understand the history of dialects and of folklore, but they account for a good many spontaneous outbursts of barbarism in the seemingly pacified and romanised provinces of the Empire at a time when the iron hand of the rulers began to relax its grip over the conquered populations. Berber, Punic, Iberian, Illyrian, and Keltic tribes come forward again in the calamitous years of the fourth and fifth centuries. Usurpers, riotous soldiers, and brigands gather strength from national aspirations, and in the end the disruption of the Empire becomes inevitable on account of internal strife as well as of foreign invasions. Nowhere perhaps has this subliminal life of the province to account for so much as in England, where the arts and crafts of Rome were introduced in the course of three centuries and a half of gradual occupation, and Latin itself was widely spoken by the upper classes, but where nevertheless the entire fabric of Roman rule crumbled down so rapidly during the fifth century, and Kelts were left to fight with the Teutons for the remnants of what had been one of the fair provinces of Rome.

A transformation similar to that expressed in language is clearly perceivable in the history of Art. Christianity introduced into the world a powerful new factor, the strength of which may be gauged in the paintings of the Catacombs and in the rise of new styles of architecture — the Byzantine and the Romanesque. Thus we have to deal not with mere deterioration and decay, but also with the lowering of the level

of culture and the barbarisation of art which make themselves felt in various ways. When Rome had to raise a triumphal arch to the conqueror of Maxentius, a great part of the reliefs for its adornment were carried over from the Arch of Trajan, while some sculptures were added by contemporary artists. And the latter perpetuate the decay of art and of aesthetic taste. The figures are distorted, the faces deformed. On the so-called discus of Theodosius the symbolical figures of the lower part were copied from ancient originals and are handsome. The upper half was filled with representations of living people, and it is evident that the gross, flat, ugly faces, the heavy embroidered uniforms, were reproduced with fidelity, while the handling of the figures strikes the observer by its clumsiness and faulty designs. The chief thing in the pictorial and plastic arts of the third and fourth centuries is not beauty or expression, but size and costly material. Gallienus, whose unfortunate reign was nicknamed the "period of the thirty tyrants," ordered a statue of himself 200 feet in height: it was planned on such a scale that a child was able to ascend by a winding staircase to the top of the Emperor's lance. Instead of marble, precious porphyry, a stone exceedingly difficult to cut, was used for plastic purposes; the contractor and polisher were more important persons than the sculptor for the purpose of making statues of this material.

It is of special importance for us to notice the gradual degeneration or rather transformation of economic life. Towards the beginning of our era a great circuit of industrial and commercial intercourse is formed under the protection of the Empire: it reminds us in some ways of the world-market of the present time. The different provinces exchanged goods and developed specialities fitting into one whole through mutual support; the excellent roads made quick exchanges possible, considerable capital sought employment in productive enterprises, firm political power and mutual confidence fostered the growth of credit. From the third century onwards the picture changes. The subjection of conquered peoples by Roman citizens ceases and the greater part of the population of the Empire is admitted to the rights of citizenship. This meant that masses of people, over whom governors, *publicans* and contractors had exercised almost uncontrolled sway, were enabled to come forward with their interests and legal claims. Provincial forces began to assert themselves, and in husbandry local needs and the requirements of small people made themselves more and more felt. As a consequence, the wide organisation of world intercourse gives way before more direct and modest economic problems — each social group has to look out primarily for itself in regard to food, clothing, housing, furniture. On the other hand the supply of slaves gets more and more hampered by the fact that wars of conquest cease. In the beginning of the third century we hear already of a price of 200 aurei or 500 denarii of full ancient coinage for a slave (*Dig.* iv. 4, 51) — a very high price indeed, which shews indirectly how



difficult it was to get slaves. During the protracted defensive wars which had to be fought on all the frontiers prisoners were frequently made, but these Germans, Slavs, Huns were difficult to manage and made clumsy labourers when settled for agricultural purposes: it was more profitable to leave them a certain independence on their plots, and therefore to cut up large estates into small holdings. Lastly, the rise of provincial and local interests and the change in the condition of the labouring classes coincided with the terrible political calamities which I have already had occasion to mention. The dislocation of the commonwealth rendered all widely extended economic plans insecure and contributed by itself to the tendency of each separate locality to live its own life and to work for its own needs without much help from the outside. As a result of the working of these different causes society falls back from a complicated system of commercial intercourse to the simpler forms of "natural economy." This movement is not arrested by the restoration of the Empire in the fourth century, but rather strengthened by it. Political power is indeed restored, but it has to be maintained by straining every nerve in social life, and this straining hampers free movement and free contract, fastens every one to a certain place and to a certain calling.

In an "Exposition of the whole world and of nations" translated from Greek in the time of Constantius (soon after 345) much attention is still paid to the economic intercourse between the different parts of the Empire. Greece itself is said to be unable to satisfy its own needs, but in regard to many of the other provinces it is expressly noted that they are sufficient unto themselves. Besides, most of them produce goods which are exported to other places. Ascalon and Gaza, for example, are said to provide excellent wine for Syria and Egypt; Scythopolis, Laodicea (in Syria), Byblus, Tyre, Berytus send out linen wares all round the world, while Caesarea, Tyre, Sarepta and Neapolis are famous in the same way for their purple-dyed tissues. Egypt supplies Constantinople and the Eastern provinces with corn and has a monopoly in the production of papyrus. From Cappadocia furs are obtained, from Galatia different kinds of clothing. Laodicea in Phrygia has given a name to garments of a special kind. Asia and the Hellespont produce corn, wine, and oil; in Macedonia and Dalmatia, iron and lead mines are noted; in Dardana (Illyria) pastoral pursuits are prevalent and bacon and cheese are sent to market, while Epirus is distinguished by its large fishing trade. The Western provinces are not described in such a minute way but fine Italian wines are mentioned, the trade of Arles for imports into Gaul is noted, and Spain is extolled on account of its oil, cloth, bacon and mules. Oil is also said to be largely supplied by the African province, while clothing and cattle come from Numidia. Pannonia and Mauretania are the only provinces mentioned as carrying on the slave trade.

Some forty-five years before this commercial geography of the Empire was drawn up, another curious document shews the imperial authorities engaged in a wearisome struggle in order to protect easy intercourse and to ward off the rise of prices — I mean the famous edict of Diocletian and of his companion emperors establishing maximum prices in the Empire. Such measures are not taken without cogent reasons, and, indeed, we are told that prices had risen enormously, although it is hardly probable that the reason of the dearth had to be sought in the iniquities of the rulers (Lactantius, *de mortibus persecutorum*, c. 7). The enactment itself dilates on the evil greed of avaricious producers and venders, and declares in the name of the "fathers of human kind" that justice has to arbitrate and to intervene. The Emperors are especially incensed at the hard bargains which are extorted from soldiers quartered in the provinces or moving along the roads: prices are screwed up on such occasions not to four or eight times the ordinary value, but to an extent that could not be expressed in words. If such things happen in times of abundance what is to be expected from seasons when actual want is experienced? Without attempting to fix normal prices the Emperors threaten with capital punishment merchants engaged in supplying the different provinces with wares: Lactantius reports that blood flowed and that the impossibility of enforcing cheapness by the hands of executioners was only recognised after fruitless attempts to terrorise tradesmen into submission.

Let us look, however, at some of the details of the edict, fragments of which have been preserved in several copies in the Balkan peninsula, Asia Minor, and Egypt, viz., in the provinces under the direct sway of Diocletian.

Traces of commercial intercourse of the same kind as that described in the *Expositio* frequently meet the eye. We hear again of the high class wines of Italy, of linen vestments from Laodicea, Scythopolis, Byblus, of purple-dyed garments manufactured on the Syrian coast and fetching very high prices, and of somewhat less expensive kinds from Miletus: a piece of purple linen for ornamental stripes (*clavi*) weighing six ounces may be sold for 13,000, 23,000 and even 32,000 denarii, 50,000 of the latter corresponding to one pound of gold.<sup>1</sup> Cloth garments came from Laodicea in Phrygia, from Modena in Italy and in the shape of coarse, warm mantles from Flanders. In a word the lines of commercial intercourse are clearly traced, but the difficulties encountered by trade under new conditions are also very visible. Some comparisons with extant valuations of goods ordered for soldiers enable us to form a judgment as to the fluctuations of prices which Diocletian's enactment tried to moderate. We hear, *e.g.*, that in one case 80

<sup>1</sup> Roughly equivalent to £46 present coinage.

pounds of bacon were estimated at 1 solidus (6000 copper denarii) and in another instance 20 pounds at 1000 denarii. According to the tariff of Diocletian the maximum price for bacon of the best kind would have been in the first instance 96,000, and in the second 16,000 copper denarii, the latter being about 16 times more than the ordinary price.

It is important to notice that while the ordinary agricultural labourer is not allowed to receive higher wages than 25 silver denarii (about 120 copper denarii) per day besides board, the maximum price of a double sextarius (roughly, about a quart) of wheat was fixed at 100 silver denarii, and that of a pound of pork at 12 silver denarii.

One cannot wonder at the failure of Diocletian's attempt, which according to contemporary testimony only increased the evils it was meant to suppress, the penalties against the merchants leading to concealment of goods and interruptions of trade. But it is characteristic of the methods of compulsory legislation constantly employed by the emperors of the fourth century that Julian made a similar and quite as unsuccessful attempt to coerce the citizens of Antioch into fair trade.

It is impossible to suppose that such measures were dictated by a kind of "Caesar madness," prompting the rulers of the civilised world to affirm their will and wisdom as against economic laws. However faulty in its conception, the policy indicated by the edicts of Diocletian and Julian had its roots in a well-meaning though ineffectual desire to regulate trade and to protect fair intercourse. It may be likened, as most attempts to impose maximum limits to prices, to the police supervision of trade in necessities of life practised in besieged cities. The emperors and their bureaucracy had come to look on the whole civilised world subject to their authority as upon a besieged city, in which all civil professions had to conform to military rule.

The same kind of evolution from free intercourse to compulsion may be observed in the legislation on commercial and industrial corporations. Roman law passed through several stages in this respect. At the time of the Republic guilds of artisans and merchants could be formed by private agreement if their statutes and activity did not infringe the laws of the State (Gaius in *Dig.* XLVII. 22, 4). During the civil conflicts of the last years of the Republic and in the early Empire organised corporations were several times dissolved and forbidden on account of the political agitation carried on by their members, and from Augustus' time concession by the Senate and confirmation by the Prince had to be applied for when a new college or guild had to be formed. But police supervision by the State did not alter the main feature of the corporations, namely their spontaneous origin in the needs of society and the wish of private persons to carry on profitable trade and to form unions for mutual support and social intercourse. The imperial Govern-

ment was often inclined to repress these spontaneous tendencies, as we may gather, *e.g.*, from Trajan's correspondence with Pliny.

The first indication of a further change in the relations between government and corporations may be noticed in the reign of Alexander Severus. This Emperor, instead of restricting the rise of trade guilds, actually favoured the formation of corporations of wine merchants, grocers, shoemakers, and other crafts (Lampridius, *Alexander Severus*, 33). We may suspect that at this time, that is in the second quarter of the third century, the Government began to perceive a slackening in the energy of trade and commerce and chose to exert its authority in patronising trade guilds. The restoration of imperial power under Aurelian brought about another and more powerful attempt in the same direction. One of the measures of this Emperor was the assumption of a wide-reaching guardianship over the alimentation of Rome. The supply of corn from Egypt was increased; lists of paupers (*proletarii*) entitled to be fed by the State were drawn up, and the privilege of living at the cost of the commonwealth was made hereditary; instead of corn, bread was distributed, and along with bread — oil, salt, and pork. In connexion with this system of alimentation of the poorer classes in Rome Aurelian reorganised the service of the merchants responsible for the transport of corn on the Nile and on the Tiber. This throws light on the immediate reason for the transformation of corporations in the ensuing age: trades and crafts which had a bearing on vital needs of social intercourse were taken under the tutelage of the Empire and carried on henceforth, not as free professions but as compulsory services.

This is clearly seen in the legislation of Constantine and remains characteristic of the legal treatment of trade during the whole of the fourth and of the fifth century.

In the *Lex Julia* of 747 U.C. enacted by Augustus the principle was already formulated that a combination of individual workmen or traders into a college had to be warranted not only by their wishes and interests but by public utility. The public element assumes now a preponderating influence. Bakers are authorised to form a craft guild not because they see an advantage in being organised in this way, but because the State wants their services in regulating the trade in bread and providing for the needs of the inhabitants of cities. The result of this enlisting of trades and crafts into public service is a system entirely at variance with our conceptions of supply and demand, and of economic intercourse.

To begin with, all freedom in the choice of professions came to an end. Corporations are required to hold their members to their occupations all through life. All attempts of single members to leave their place of abode and customary work are considered as a flight from duty and severely forbidden. In 395, *e.g.*, Arcadius and Honorius decree heavy fines against powerful people who conceal and protect fugitive

members of *curiae* and *collegia*. For each one of the latter the patron has to pay a fine of a pound of gold (C. Th. xii. 1, 147). The codices are full of enactments against fugitives of this kind, and such legislation would prove, by itself, that a *régime* of caste was being gradually established in the Empire. It is certain that the invasions of barbarians, such as those of Alaric for example, contributed powerfully to scatter the working population, but, apart from these, one of the motives of flight was the heavy burden of taxation.<sup>1</sup> It is probable that the initiative in regard to the measures of stern compulsion came not from the bureaucrats of the Empire, but from the corporations themselves which were made liable to the requirements of the State in case of the flight of their members. Of course, the consistent enforcement of such a policy actually blocked the natural selection of professions and the development of independent enterprise.

Let us, to take a concrete example, attend somewhat closer to the discipline imposed on the important college of *navicularii*. During the first two centuries of our era the term designated all shipowners engaged in the carrying trade by sea; gradually it came to mean shippers employed by the State for the transport of goods, especially of corn. Most of the corn necessary for the population of Rome was derived from Egypt and Africa, and we hear of a large fleet starting from Alexandria for the purpose of carrying over the supply. There is good evidence to shew that during the second century A.D. the college was composed of men who had joined it as voluntary members and sought the privileges which were conceded to it in return for its services to the State. All this appears changed in the fourth century. The *navicularii* are to devote themselves primarily to the transport of goods belonging to the State, more particularly corn and oil for Rome and Constantinople, while African *navicularii* were bound to bring wood for fuel to the public baths of Rome. The Egyptian *navicularii* received their cargo from the collectors of the *annona*, the corn tribute in the province. The season for the voyages of their ships was reckoned from the first of April to the 15th of October, the other months being held free on account of stormy weather. Each *navicularius* had to send his ships to the fleet once in two years. When the ship weighed anchor it had to proceed by the shortest route and not to stop anywhere without absolute necessity. Should one of the ships of the corn fleet be delayed in a port the governor and Senate of the place were bound, if necessary, to use force, in order to send the merchants out to sea again. Outside these official journeys they had the right to move on their own behalf, but evidently their right did not outweigh the uncomfortable limitations imposed on them during their service period, as we find the emperors endeavouring in every way to keep the *navicularii* to their task and to prevent them from slipping out of the college. A curious letter of

<sup>1</sup> Ammianus Marcellinus, xxxi. 6, § 6.

St Augustine tells how the bishop refused to accept the bequest of a certain Bonifacius, an African *navicularius*, on behalf of the see of Hippo. Bonifacius had disinherited his son and wanted to pass over his property to the Church. St Augustine refuses to accept the gift, because he does not wish to entangle the Church with the dealings of the *navicularii*. In case of shipwreck the Government would order an inquiry, the sailors rescued from the wreck would be put to torture, the Church would have to pay for the lost cargo, etc. The members of the college evidently had to be rich men and, sometimes, if there were gaps to be filled, the State would compel rich men to join the *corpus naviculariorum*. The service was hereditary, and if any member absconded, his property was forfeited to the college. These facts may be sufficient to shew to what extent the commerce of those days suffered under the stringent discipline imposed by the requirements of the State, and what a queer mixture of a business man and of an official a shipowner of those days was. I may add that, although we know most about *navicularii*, bakers, purveyors of pork, and similar merchants engaged in supplying the capitals with food. The provisioning of the smaller towns and the management of all crafts and trades were carried on more or less on similar principles.

An important chapter in the history of the decline and fall of the Empire is constituted by the gradual decay of municipal institutions. The ancient world took a long time to exchange its organisation of free cities for that of a great power, governed by a centralised bureaucracy. Even after the conquest of its provinces the Roman commonwealth remained substantially a confederation of cities, and municipal autonomy prospered for a long while. We see the cities of the first and second centuries vying one with the other in local patriotism, in the munificence of leading citizens, in generous contributions of private men towards the welfare of poorer classes, public health, and order. The economic progress brought about by the establishment of the Empire made itself felt primarily in the increased activity and prosperity of city life. But threatening symptoms begin to appear even in the second century A.D. Municipal self-government, bereft of its political significance, restricted to the sphere of local interests and local ambitions, is apt to degenerate into corrupt and spendthrift practices: the wealthier provincial citizens ruin themselves by lavish expenditure on pageants and distributions, municipal enterprise in matters of building and philanthropy often turns out to be extravagant and inefficient. The emperors find no other means of remedying such defects than the institution of curators of different kinds — *curatores rei publicae*, *curatores kalendarii*, commissioners for the correction of the condition of free cities (*ad corrigendum statum liberarum civitatum*). In the correspondence between Pliny and Trajan the imperial commissioner is already seen to interfere in the most minute

questions of city administration and, at the same time, he is constantly applying for direction to his imperial master. The ideal of centralisation is clearly expressed in this intimate intercourse of two well-meaning and talented statesmen: the Emperor appears in the light of an omniscient and all-powerful Providence watching over all the dealings and doings of his innumerable subjects. In order to embody such an ideal the central power had to surround itself with helpers and executive officers, and Hadrian laid the foundations of a Civil Service more comprehensive and better organised than the rudimentary administrative institutions of the Commonwealth and of the early Empire. Later on Diocletian and Constantine multiplied the number of bureaucratic organs and combined them into one whole by the bands of constant supervision and iron discipline. But even before this ultimate completion of bureaucracy in the fourth century, in the very beginnings of the system of central tutelage, a kind of vicious circle formed itself: central authority was called upon to interfere on account of the deplorable defects of municipal administration, while municipal life was disturbed and atrophied by constant interference from above. It is impossible to say precisely what was cause and what was effect in this case: the process was, as it happens in many diseases, a constant flow of action and reaction. The jurists of the third century find already a characteristic formula for corporative town organisation in an analogy with the condition of a minor under tutelage, and this analogy is followed up into all sorts of particulars as to rights and duties. No wonder that for many citizens municipal life loses its interest, that they try to eschew the burdens of unremunerated and costly local administration, and that as early as the time of the Severi compulsion has sometimes to be used to bring together a sufficient number of unwilling magistrates and members of municipal senates (*Dig.*, L. 1, 38, 6; L. 2, 2, 8).

A circumstance which in itself would have hardly been sufficient to overthrow municipal organisation, certainly contributed to divert people's minds from the customary trend of local patriotism and to make the performance of certain duties difficult — I mean the spread of Christianity. Municipal institutions were intertwined with cults of Roman and local gods, including religious devotion to the Deity of the Emperors. The new faith, on the other hand, did not admit of sacrifices or prayer to the false gods of heathendom: hence a conflict which did not admit of a ready solution. Let us listen to the somewhat exaggerated statement of Tertullian — “We concede,” he says, “that a Christian may without endangering salvation assume the honour and title of public functions — if he does not offer sacrifices nor authorise sacrifices, if he does not furnish victims, if he does not entrust anybody with the upkeep of temples, if he does not take part in the management of their income, if he does not give games either at his own or at the public expense, if he does not preside at them, if he does not announce or arrange any festival,

if he avoids all kinds of oath and abstains, while exercising power, from giving sentence in regard to the life or the honour of men, decisions as to money matters being excepted, if he does not proclaim edicts, nor act as a judge, nor put people into prison or inflict torture on them. But is all this possible?" As a matter of fact the heathen State did certainly not go out of its way to make all these exceptions possible, and conflicts between law and religious conviction arose every day. On many occasions Christians of a softer mould submitted to what they considered to be inevitable, and performed most of the duties challenged by the fiery African. The Church had to work out a penitentiary code for those among its members who had sullied themselves by heathen practices (see *e.g.* the canons of the Synod of Elvira in Spain). Sometimes again the more firm among the Christians made a stubborn stand and were martyred for their protest as enemies of the Roman State. Altogether there can be no doubt that the inherent contradiction between Christian religion and the pagan practices of municipal life did put an extra strain on the latter and could not but increase the disorder which was setting in. The bold step taken by Constantine in recognising Christianity as a state religion saved the situation to some extent, but it could not do away at a stroke with all the pagan elements of municipal life. The strife between religions assumed a new aspect, and as the vital connexion between local self-government and local cults was never restored, that unity of conception which marked antiquity when at its best had to be replaced by a deep dualism tending towards new solutions of political and moral problems. The greatest representative of conquering Christianity, St Augustine, recognises the defeat of the material world of antiquity and has to fashion his ideals according to a scheme of two cities in which only the heavenly one appeals to his devotion and energy.

Apart from this complication arising out of peculiarities of religious history, the middle class of the citizens was undergoing a transformation similar to that of the merchants and craftsmen. When the chaotic conditions of the second half of the third century were arrested by the statesmanship and military power of Aurelian and Diocletian, the policy of compulsion was brought to bear with full weight on the well-to-do inhabitants of cities. They were mostly not only houseowners in our sense, but also owners of lands in the vicinity of the towns, although distinctions which it is somewhat difficult for us at the present time to formulate in detail were drawn between them and the *possessores* or landowners properly so called. However, the bulk of the well-to-do townsmen was considered as a separate class, the *curiales*, out of which the actual members of city senates, the *decuriones*, as well as its executive officials and justices, were selected. Yet the connexion between the *curiales* group and the actual office-holders was so close, there were so few members of the former who had not to serve in one way or the other,



that the enactments of the Codes currently confuse the two distinct terms — *curiales* and *decuriones*. This confusion of itself points to the overburdening of the middle class in the towns with service. And we find indeed that its members are compelled to take over without salary the various personal *munera*, or charges, of local government, to administer the town, to act as petty justices, to take part in deputations, to arrange games, to inspect public buildings, to provide fuel for baths, to superintend postal and transport service (*cursus publicus*), to collect rates, etc.

The most burdensome of their obligations were connected with the collection of taxes. They were chiefly responsible for assessing the town population, and out of their number were selected the inspectors of public stores (*horrea*) and the *decemprimi* (δεκάπρωτοι), who had to collect the land tax and the tribute in kind (*annona*). Both heathen and Christian authors testify to the crushing burden of taxation during the fourth and fifth centuries, and the unfortunate *curiales*, who were made the instruments of collection under the watchful and extortionate supervision of state officials, were not only suffering from the unpopularity of their functions, but had constantly to fall back on their own resources in order to make good deficiencies and arrears. The *decemprimi* were primarily responsible as collectors, and when they vacated their office they had to nominate their successors and to stand security for their good behavior. Not content with this the provincial authorities commonly made the town, that is, primarily the town senate (*curia*), liable for deficiencies in the full sum required. The emperors sometimes intervened to forbid such collective liability (C. Th. XI. 7, 2; C. Just. XI. 59, 16), but on other occasions they enforced it in the most sweeping manner, as for instance when Aurelian, and later on Constantine, decreed that the town senates (*ordines*) should be made responsible for the taxes of deserted estates, and in case they should be unable to support the burden it should be distributed among the various local districts and estates (C. Just. XI. 59, 1).

In consequence of such oppressive burdens laid on the *curiales* we witness the curious spectacle of widely spread attempts on the part of the citizens to escape into more privileged professions — into the clergy or the army — and even of their flight into the country, where they were sometimes glad to live and work as simple *coloni*. The Codex Theodosianus and the Codex Justinianus are full of enactments forbidding the *curiales* to leave the place of their birth, condemning them to a hereditary subjection to municipal charges (*munera*) in fact turning their condition into a kind of serfdom. All the sons of a *curialis* had to follow their father's career, they were deemed *curiales* from the date of their birth (C. Th. XII. 1, 122). If there was not a sufficient number of persons of this class to uphold all its obligations, owners of estates

(*possessores*), denizens (*incolae*), well-to-do plebeians, were pressed into it. The wretched townspeople were suspected of wanting to escape by flight from their onerous condition and had to apply to the governor for special leave of absence when they left the place of their birth for the sake of business or travel. If one of them wanted to change permanently his place of abode he was bound to provide a substitute or to leave a great part of his fortune to the *curia*. This epoch of imperial legislation does away, for fiscal and administrative purposes, with some of the fundamental principles of Roman law in its better times. A *curialis*, though a Roman citizen in the exercise of full civil rights, is unable freely to bequeath his fortune to another Roman citizen belonging to a different city: property passing out of the jurisdiction of one *curia* into that of another is charged with a heavy special payment to the former senate, and in fact remains "obnoxious" to it (C. Th. XII. 1, 107); a later constitution enacted that at least one-fourth of the property should remain in the hands of the original *curia*. If a *curialis* wanted to sell land or slaves employed in the cultivation of his estate he had to obtain leave from the governor of the province (C. Th. XII. 3, 1). Heiresses were much hampered in the right to marry strangers outside their late father's *curia* and had in such cases to relinquish one-fourth part of their property.

The climax of this legislation of servitude is reached when the emperors actually condemn people for some crime or misdemeanour to be enrolled as members of a *curia*: sons of veterans, *e.g.* who, by chopping off their fingers, had rendered themselves unfit to serve in the army, were stuck into the *curia*, and the same fate awaited unworthy ecclesiastics.

The policy of compulsion and the spread of caste were undoubtedly responsible to a great extent for another social process of great moment, namely, for the formation of the colonate, an institution destined to play an important part in medieval peasant life. Its roots stretch far back into the earlier history of Roman husbandry. Columella, a writer on agriculture of the first century A.D., instructs his readers that it is advantageous for owners of estates of insufficient fertility and difficult cultivation to employ free farmers, *coloni*, instead of slaves. The tenants were sometimes settled on the *métayer* system (*colonia partiaria*), the farmer sharing crops with the owner. Juridically the relation was regulated by the rules of the law of lease (*locatio conductio*) and the Digest often refers to the various problems arising under this contract; custom and tacit agreement played a great part in the treatment of such questions in practice. By the side of contractual relations between private landlords and tenants stood administrative regulations as to the management of vast domains of the Crown and of the private patrimony of the Emperor. Crowds of tenants were settled on these estates who had to look for a guarantee to the possession of their holdings rather to

the equity and properly understood interest of their imperial masters than to formal contractual right. Lastly, a good many slaves were put into a position similar to that of the tenants of free birth, and as a matter of fact, it got to be more and more difficult to distinguish between *coloni* by contract and *quasi-coloni* by long usage and customary tenure. One trait which tended to reduce the distance between the different groups was the heavy indebtedness of most free farmers: they had often to take their agricultural outfit from the landowner along with the farm; in case of economic difficulties they turned to him as to their natural protector and a capitalist near at hand, and when once debts had been made, it was exceedingly difficult to pay them off.

Fourth-century legislation approaches these relations in its usual despotic manner. A law of Constantine dated A.D. 332 gives us the first glimpse of a new order of men standing between the free and the unfree and treated, in fact, as serfs of the glebe. It runs thus: "With whomsoever a *colonus* belonging to someone else (*alieni juris*) may be discovered, let the new patron not only restore the *colonus* to the place of his birth (*origini*), but let him also pay the tax for the time of his absence. As for the *coloni* themselves who contemplate flight, let them be put into fetters after the manner of slaves, so that they should perform duties worthy of freemen on the strength of a servile condemnation" (C. Th. v. 17, 1). But from Constantine again we have another enactment marking the other side of the condition, namely, the legal protection afforded to the *colonus* against possible exactions. About A.D. 325 the Emperor laid down in a rescript to the *vicarius* of the East that, "a *colonus* from whom a landlord exacted more than it was customary to render and than had been obtained from him in former times, may apply to the judge nearest at hand and produce evidence of the wrong. The person who is convicted of having claimed more than he used to receive shall be prohibited to do so in the future after having given back what he extorted by illegal superexaction" (C. Just. xi. 50, 1).

The legal protection afforded to the *coloni* was not suggested by principles of humanity, but by the necessity of keeping up at least some portion of the previous personal freedom of these peasants in order to safeguard the interest of the State which looked upon this part of the population as the mainstay of its fiscal system. If the emperors made light of the right of free citizens to choose their abode and their occupations as they pleased and did not scruple to attach the *coloni* to their tenures, the absolute right of landowners to do what they pleased with their land was not more sacred to them. Constantine imposed the most stringent limitations on their power of alienating plots of land. "If someone wants to sell an estate or to grant it, he has not the right to retain *coloni* by private agreement in order to transfer them to other places. Those who consider *coloni* to be useful, must either hold them together with the estates or, if they despair of getting profit from these estates,

let them also give up the *coloni* for the use of other people" (C. Th. XIII. 10, 3; A.D. 357). In the reign of Valentinian, Valens, and Gratian, about A.D. 375, this principle is characteristically extended to the very slaves. "As born cultivators (*originarii*) cannot be sold without their land, even so it is forbidden to sell agricultural slaves inscribed in the census rolls. Nor must the law be evaded in a fraudulent manner, as has been often practised in the case of *originarii*, namely, that while a small piece of land is handed over to the buyer, the cultivation of the whole estate is made impossible. But if entire estates or portions of them pass to a new owner, so many slaves and 'born cultivators' should be transferred at the same time as used to stay with the former owners in the whole or in its parts" (C. Just. XI. 48, 7). The fiscal point of view is clearly expressed on many occasions. Valentinian and Valens entrust the landowners with the privilege of collecting the taxes of their *coloni* for the State with the exception of those tenants who have besides their farms some land of their own (C. Th. XI. 1, 14). This right and duty might be burdensome, but it certainly gave the landlords a powerful lever in reducing their free tenants to a condition of almost servile subjection. Perhaps the most drastic expression of the process may be seen in the fact that *coloni* lose their right to implead their masters in civil actions except in cases of superexaction. In criminal matters they were still deemed possessed of the full rights of citizens (C. Just. XI. 50, 2).

But it would be wrong to suppose that the condition of the farmers in the fourth and fifth centuries is characterised by mere oppression and deterioration. In the case of rustic slaves it is clearly seen that their fate was much improved by the course of events and by legislation. Their masters lost part of their former absolute authority because the State began to supervise the relations between master and slave for the sake of keeping cultivators to their work and thereby ensuring the coming in of taxes. Considerations of a similar nature exerted an influence on the fate of *coloni*, and they made themselves felt not only in social legislation, but also in husbandry. The tremendous agrarian crisis through which the Empire was passing could not be weathered by mere compulsion and discipline. On a large scale, it was a case like the one described in Columella's advice to landowners: if you want to get your land cultivated under difficult conditions, do not try to manage it by slave labour and direct orders, but entrust it to farmers. The great *latifundia* of earlier times were parcelled up into small plots, because only small cultivators could stand the storm of hostile invasion, of dislocation of traffic, of depopulation. Nor was it possible for the landowner to demand rack-rents and to avail himself of the competition between agricultural labourers. He had to be content if he succeeded in providing his estates with tenants ready to take care of them at moderate and customary rents, and both sides — the lord and the tenant — were interested

in making the leases hereditary if not perpetual. Thus there is a second aspect to the growth of the colonate. The institution was not only one of the forms of compulsion and caste legislation, but also a "meliorative" device, a means for keeping up culture and putting devastated districts under the plough. Among the earliest roots of the colonate we find the licence given to squatters and peasants dwelling in villages adjoining waste land to occupy such land and to acquire tenant right on it by the process of culture. The Emperor Hadrian published a general enactment protecting such tenants on imperial domains, and the African inscriptions testify that his regulations did not remain a dead letter.

This feature — cultivation of waste and amelioration of culture — is seldom expressed in as many words in the enactments of the Codex Theodosianus and of the Codex Justinianus, because the laws and rescripts collected there are chiefly concerned with the legal and fiscal aspects of the situation. The legislators had no occasion to speak directly of low rents and remissions in their payment. Yet even in these documents some indications of the "emphyteutic" tendency may be gleaned. I will just call attention to one of the earliest "constitutions" relating to the colonate, namely, to the decree of Constantine of A.D. 319 (C. Just. xi. 63, 1). It is directed against encroachments of *coloni* on the lands of persons who held their estates by the technical title of *emphyteutae*, of which we shall have to say more by and by. It is explained that *coloni* have no right to occupy lands for the culture of which they have done nothing. "By custom they are allowed to acquire only plots which they have planted with olives or vines." This ruling is entirely in conformity with the *Lex Hadriana de rudibus agris* and testifies to the peculiar right of occupation conceded to cultivators of waste.

The technical requirement of making plantations of olive trees or vines corresponds exactly to the Greek expression *θρεύειν* which reappears in the term *emphyteusis* so much in use in the later centuries of the Empire. Of course, cultivation of the waste was not restricted in practice to the rearing of these two kinds of useful trees, nor can the view so clearly formulated in this case have failed to assert itself on other occasions, especially in the relations between landlord and tenant. But the luxuriant growth of *emphyteusis* as a widely prevalent contract is very characteristic of the epoch.

The *emphyteusis* of the later Empire is distinguished from other leases by three main features: it is hereditary; the rent paid is fixed and generally slight; the lessee undertakes specific duties in regard to amelioration on the plot and may lose the tenancy if he does not carry them out. These peculiarities were so marked that there was considerable doubt whether the relation of *emphyteusis* was originated by the sale of a plot by one owner to the other with certain conditions as to the payment of rent, or by a downright lease. A constitution of Zeno,

published between 476 and 484, decided the controversy in the sense that the contract was a peculiar one, standing, as it were, between a sale and a lease (C. Just. iv. 66, 1). The meaning of such a doctrine was, of course, that in many cases rights arose under cover of *dominium* (Roman absolute property), which amounted in themselves to a new hereditary possession, and arising from the labour and capital sunk by the subordinate possessor into the cultivation of the estate, and leaving a very small margin for the claims of the proprietor. Such hybrid legal relations do not come into being without strong economic reasons, and these reasons are disclosed by the history of the tenure in question. Its antecedents go far back into earlier epochs, although the complete institution was matured only towards the end of the fifth century. One of the roots of *emphyteusis* we have already noticed in the occupation of waste land by squatters or cultivators dwelling on adjoining plots. In the fourth and fifth centuries the emperors not only allow such occupation, but make it a duty for possessors of estates in a proper state of cultivation to take over waste plots. This is the basis of the so-called *epibole* (ἐπιβολή), of the "imposition of desert to fertile land," an institution which arose at the time of Aurelian and continued to exist in the Byzantine Empire. It is worth noticing that a law of Valentinian, Theodosius, and Arcadius gives every one leave to take possession of deserted plots; should the former owner not assert his right in the course of two years and compensate the new occupier for ameliorations, his property right is deemed extinguished to the profit of the new cultivator (C. Just. xi. 59, 8). In this case voluntary occupation is still the occasion of the change of ownership, but several other laws make the taking over of waste land compulsory. An indirect but important consequence of the same view may be found in the fact that the right of possessors of estates to alienate portions of the same was curtailed: they were not allowed to sell land under profitable cultivation without at the same time disposing of the barren and less profitable parts of the estate; the Government took care that the "nerves" of a prosperous exploitation should not be cut.

A second line of development was presented by *leases* made with the intention of ameliorating the culture of certain plots. The practice of such leases may be followed back into great antiquity, especially in provinces with Greek or Hellenised population; and it is on such estates that the terms *φντεύειν*, *emphyteusis* first appear in a technical sense. A good example is presented by the tables discovered on the site of Heraclea in the gulf of Tarentum, where land belonging to the temple of Dionysos was leased to hereditary tenants about B.C. 400 on the condition of the construction of farm buildings and the plantation of olives and vines.<sup>1</sup> Emphyteutic leases of the same kind, varying in

<sup>1</sup> Dareste, Houssoullet et Reinach, *Recueil d'inscriptions juridiques grecques*, I pp 201 ff

details, but based on the main conditions of amelioration and hereditary tenancy, have been preserved from the second century A.D. in the Boeotian town of Thisbe.<sup>1</sup> Roman jurists, *e.g.* Ulpian, mention distinctly the peculiar legal position of such "emphyteutic" tenancies, and there can be no doubt that as the difficulties of cultivation and economic intercourse increased, great landowners, corporations, and cities resorted more and more to this expedient for ensuring some cultivation to their estates even at the cost of creating tenancies which restricted owners in the exercise of their right.

A third variety of relations making towards the same goal may be observed in the so-called perpetual right (*jus perpetuum*). It arose chiefly in consequence of conquest of territories by the Roman State. The title of former owners was not extinguished thereby but converted into a possession subordinate to the superior ownership of the Roman people and liable to the payment of a rent (*vectigal*, *canon*). The distinction between Roman land entirely free from any tax and provincial land subject to tax or rent was removed in the second century A.D. when land in Italy was made subject to taxes. But the legal conception of tenant right subject to the eminent domain of the emperor remained and the *jus perpetuum* continued as a special kind of tenure on the estates of cities and of the Crown, as we should say nowadays, until it was merged into the general right of *emphyteusis* together with the two other species already mentioned.

These juridical distinctions are not in the nature of purely technical details. The great need of cultivation and the wide concessions made in its interest in favour of effective farming are as significant as the subdivision of ownership in regard to the same plot of land, one person obtaining what may be called in later terminology the useful rights of ownership (*dominium utile*), while the other retains a superior right nevertheless (*dominium eminens*). In this as in many other points the peculiarities of medieval law are foreshadowed in the declining Empire.

This observation applies even more to the part assumed by great landowners in the fourth and fifth centuries. A great estate in those times comes to form in many respects a principality, a separate district for purposes of taxation, police, and even justice. Already in the first century A.D. Frontinus speaks of country seats of African magnates surrounded by villages of their dependents as if by bulwarks. By the side of the *civitas*, the town forming the natural and legal centre of a district, appears the *saltus*, the rural, more or less uncultivated district organised under a private lord or under a steward of the emperor. The more important of these rural units are extraterritorial — outside the jurisdiction and administration of the towns. By and by the seemingly omnipotent government of the emperor is driven by its difficulties to

<sup>1</sup> Dittenberger, Programme of the University of Halle, 1881

concede a large measure of political influence to the aristocracy of large landowners. They collect taxes, carry out conscription, influence ecclesiastical appointments, act as justices of the peace in police matters and petty criminal cases. The disruptive or rather the disaggregating forces of local interests and local separatism come thus to assert themselves long before the establishment of feudalism, under the very sway of absolute monarchy and centralised bureaucracy.

If the formation of the colonate means the establishment of an order of half-free persons intermediate between free citizens and slaves, if *emphyteusis* amounts to a change in the conception of ownership, the rise of the privileges and power of landowners corresponds to the appearance of a new aristocracy which was destined to play a great part in the history of medieval Europe.

Besides what was directly conceded to these lords by the central authority we must reckon with their encroachments and illegal dealings in regard to the less favoured classes of the population. The State had to appeal to private persons of wealth and influence because it was not able to transmit its commands to the inert masses of the population in any other way. Aristocratic privilege was from this point of view a confession of debility on the part of the Empire. But the inefficiency of the State was recognised by its subjects as well and, as a natural result, they applied for protection to the strong and the wealthy, although such a recourse to private authority led to the infringement of public interests and to the break-up of public order. Private patronage appears as a threatening symptom with which the emperors have to deal. In the time of undisputed authority of the commonwealth it was a usual occurrence that benefactors of a town or village, persons who had erected waterworks, built baths, or founded an alimentary institution for destitutes should be honoured by the title of *patroni* and by certain privileges in regard to precedence and ceremonial rights. The emperors of the fourth and of the fifth century had to forbid patronage because it constituted a menace to law and to public order. We hear of cases of "maintenance"; parties to a trial being protected by powerful *patroni*, who seek to turn the course of justice in favour of their clients. Libanius, a professional orator of the epoch of Valentinian II and Theodosius I, gives a vivid description of the difficulties he had to meet in a suit against some Jewish tenants of his who refused to pay certain rents according to ancient custom. If we are to believe our informant, they had recourse to the protection of a commander of troops stationed in the province, and when Libanius came into court and produced witnesses, he found the judge so prepossessed in favour of his opponents that he could not get a hearing, and his witnesses were thrown into prison or dismissed. In another part of the same speech Libanius inveighs against officers who prevent the collection of taxes and rents and favour brigandage. There may be a great deal



of exaggeration in the impassioned account of the Greek rhetor, but the principal heads of his accusation can be confirmed from other sources, especially from imperial decrees. A company of soldiers gets quartered in a village and when the *curiales* of the next town appear to collect taxes or rents, they are met by violence and may be called fortunate if they escape without grievous injury to life and limbs. In the Theodosian Code enactments directed against patronage in villages go so far as to forbid the acquisition of property in a rural district by outsiders for fear the strangers should prove powerful people capable of opposing tax collectors. According to the account of Salvian, a priest who lived in the fifth century in southern Gaul, patronage had become quite prevalent in that region. People turned to private protection out of sheer despair and surrendered their land to the protector, rather than face the extortions of public authorities. There can be no doubt that patrons and protectors of the kind described, if they were helpful to some, were dangerous and harmful to others, and the State in the fourth and fifth centuries had good reasons to fight against their influence. But the constant repetition of the same injunctions and prohibitions proves that the evil was deeply rooted and difficult to get rid of. The Sisyphean task undertaken by the Government in its struggle against abuses and encroachments is well illustrated by various attempts to create special authorities to repress the exactions of ordinary officers and to correct their mistakes.

One of the principal expedients used by Diocletian and his successors was to institute a special service of supervising commissaries under the names of *agentes in rebus* and *curiosi*. They were sent into the provinces more particularly to investigate the management of the public post, but, as a matter of fact, they were employed to spy on governors, tax collectors, and other officials. They received complaints and denunciations and sometimes committed people to prison. A decree of Constantius tries to restrict the latter practice and to impress on these *curiosi* the idea that they are not to act in a wanton manner but have to produce evidence and to communicate with the regular authorities (A.D. 355, C. Th. vi. 29, 1). But the very existence of such a peculiar institution was an incitement to delation and arbitrary acts, and in 395 Arcadius and Honorius try to concentrate the activity of the *agentes in rebus* on the inspection of the post. "They ought not to levy illicit toll from ships, nor to receive reports and statements of claims, nor to put people into prison" (C. Th. vi. 29, 8). The service of the *agentes* and of the *curiosi* was deemed to be as important as it was dangerous, and those who went through the whole career were rewarded by the high rank of counts of the first class. It is hardly to be wondered at that these extraordinary officials provided with peculiar methods of delation did not succeed in saving the Empire from the corruption of its ordinary officers.

And yet the emperors found that the only means of exercising some control over the abuses of the bureaucratic machinery and the oppression of influential people was in pitting extraordinary officials against them. The *defensor civitatis* was designed to act as a protector of the lower orders against such misdeeds. The office originated probably in voluntary patronage bestowed on cities by great men, but it was regularised and made general under Valentinian I. An enactment of Gratian, Valentinian II, and Theodosius lays chief stress on the protection afforded by *defensores* to the *plebs* in regard to taxation. The *defensor* ought to be like a father of the *plebs*, to prevent superexaction and hardships in the assessment of taxes both in regard to the town population and to rustics, to shield them against the insolence of officials, and the impertinence of judges. Not merely fiscal oppression was aimed at, but also abuses in the administration of justice, and the emperors tried to obviate the evils of a costly litigation and inaccessible tribunals by empowering the *defensores* to try civil cases in which poor men were interested. It was somewhat difficult to draw the line between such exceptional powers and ordinary jurisdiction, but the Government of the later Empire had often to meet similar difficulties. An important privilege of the *defensores* was the right to report directly to the emperor, over the governor of the province: this was the only means for making protests effective, at least in some cases. As to the mode of electing the *defensores* we notice some variation: they are meant to represent the population at large and originally the people took part in the election, though it had to be confirmed by the emperors. In the fifth century, however, the office became a burden more than an honour, a quantity of petty police functions and formal supervision was tacked on to it, and the emperors are left no choice but to declare that all notable citizens of the town have to take it in turn. This is certainly a sign of decline and there can be no doubt that the original scope of the institution was gradually lost sight of.

A third aspect of the same tendency to counterbalance the evil working of official administration by checks from outside forces may be noticed in the political influence assigned to the Church. Here undoubtedly the emperors of the fourth and fifth centuries reached firm ground. It was not a mere shuffling of the same pack of cards, not a pitting of one official against the other by the help of devices which at best answered only for a few years. It was an appeal from a defective system to a fresh and mighty force which drew forth the best capabilities of the age and shaped its ideals. If anywhere, one could hope to find disinterested effort, untiring energy, and fearless sense of duty among the representatives of the Church, and it is clear that both government and people turned to them on especially trying occasions. We need not here speak of the intense interest created by ecclesiastical controversies or of the signal evidence of vigorous moral and intellectual life among the clergy. But we have to take these facts into account if

we want to explain the part assumed by Church dignitaries in civil administration and social affairs. A significant expression of the confidence inspired in the public by the ecclesiastical authorities may be seen in the custom of applying to them for arbitration instead of seeking redress in the ordinary courts. The custom in question had its historical roots in the fact that before the recognition of Christianity as a state religion by the Empire the Christians tried to abstain as far as possible from submitting disputes and quarrels to the jurisdiction of pagan magistrates. There was a legal possibility of escaping from such interference of pagan authorities by resorting to the arbitration of persons of high moral authority within the Church, especially bishops. When Christianity conquered under Constantine, episcopal arbitration was extended to all sorts of cases and an attempt was made, as is shewn by two enactments of this emperor (Const. Sirmond. xvii. ; I.) to convert it into a special form of expeditious procedure, well within reach of the poorer classes. Episcopal awards in such cases were exempted from the ordinary strict forms of compromise accompanied by express stipulation ; the procedure was greatly simplified and shortened, the recourse of one party to the suit to such arbitration was held to be obligatory for the other party. At the close of the fourth century Arcadius considerably restricted this wide jurisdiction conceded to bishops and tried to reduce it to voluntary arbitration pure and simple. But the moral weight of their decisions was so great, that the ecclesiastical tribunals continued to be overwhelmed with civil cases brought before them by the parties. Not only Ambrose of Milan, who lived in the time of Theodosius the Great, but also Augustine, who belongs chiefly to the first quarter of the fifth century, complain of the heavy burden of judicial duties which they have to bear.

The bishops had no direct criminal jurisdiction, but through the right of sanctuary claimed by churches and in consequence of the general striving of Christian religion for humanity and charity, they were constantly pleading for grace, mitigation of sentences, charitable treatment of prisoners and convicts, etc. Panic stricken and persecuted persons and criminals of all kinds flocked for refuge to the churches ; famous cathedrals and monasteries presented curious sights in those days : they seemed not only places of worship but also caravanserais of some kind. Fugitives camped not only in the churches but at a distance of fifty paces around them. Gangs of these poor wretches accompanied priests and deacons on their errands and walks outside the church, as in such company they were held to be secure from revenge and arrest. The Government restricted the right of fiscal debtors to take sanctuary in order to escape from the payment of taxes, but in other respects it upheld the claims of ecclesiastical authority. Certain compromises with existing law and custom had undoubtedly to be effected. The Church did not attempt, for instance, to proclaim the abolition of slavery. It merely negotiated with the masters in order to obtain

promises of better treatment or a pardon of offences. But it countenanced in every way the emancipation of slaves and protected freedmen when once manumitted. The Acts of Councils of the fourth century are full of enactments in these respects (*e.g.* Council of Orange, c. 7; Council of Arles, II cc. 33, 34).

Another domain in which the authority of the bishops found ample scope for its assertion was the sphere of moral police, if one may use the expression. To begin with, pious Christians were directed by the Gospel to visit prisoners, and this commandment of Christ became the foundation for a supervision of the Clergy over the state of prisons, their sanitary conditions — baths, food, the treatment of convicts, etc. In those times when terrible need and famines were frequent, parents had the legal right to sell their children directly after their birth (*sanguinolenti*) and a person who had taken care of a foundling was considered its owner. It is to ecclesiastical authorities that the emperors turn in order to prevent these rights from degenerating into a ruthless kidnapping of children. The Church enforces a delay of ten days in order that parents who wish to take back their offspring should be able to formulate their claims. If they have not done so within the days of respite, let them never try to vindicate their flesh and blood any more: even the Church will treat them as murderers (Council of Vaison, cc. 9, 10). Again, ecclesiastics are called upon to prevent the sale of human beings for immoral purposes: no one ought to be forced to commit adultery or to offer oneself for prostitution, even if a slave, and bishops as well as secular judges have the power to emancipate slaves who have been subjected by their masters to such ignominious practices. They are also bound to watch that women, either free or unfree, should not be constrained to join companies of pantomime actors or singers against their will (C Just. i. 4, 10).

In conclusion it may be useful to point out once more that the social process taking place in the Roman Empire of the fourth and fifth centuries presented features of decline and of renovation at the same time. It was brought about to a great extent by the increased influence of lower classes and the influx of barbarous customs, and in so far it expresses itself in an undoubted lowering of the level of culture. The sacrifice of political freedom and local patriotism to a centralised bureaucracy, the rigid state of siege and the caste legislation of the Constantinian and Theodosian era produced an unhealthy atmosphere of compulsion and servility. But at the same time the Christian Church asserts itself as a power not only in the spiritual domain, but also in the legal and economic sphere. Society falls back to a great extent on the lines of local life and of aristocratic organisation, but the movement in this direction is not a merely negative one: germs appear which in their further growth were destined to contribute powerfully towards the formation of feudal society.

## CHAPTER XIX

### SOCIAL AND ECONOMIC CONDITIONS

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CHRONOLOGICAL TABLE  
OF  
LEADING EVENTS MENTIONED IN THIS VOLUME

- 284 Election of Diocletian (17 Sept.).
- 297 Peace with Persia : acquisition of the five provinces.
- 303 The Great Persecution (24 Feb.).
- 305 Abdication of Diocletian (1 May).
- 306 Elevation of Constantine at York.
- 309-380 Reign of Sapor II in Persia.
- 311 Edict of Toleration and death of Galerius.
- 312 Battle of Saxa Rubra (28 Sept.)  
Edict of Milan.
- 323 Battle of Chrysopolis (Sept.).
- 325 Council of Nicaea.
- 328-373 Athanasius Bishop of Alexandria.
- 330 Foundation of Constantinople.
- 337 Death of Constantine (22 May).  
War with Persia.
- 339 Second Exile of Athanasius.
- 341 Council of the Dedication at Antioch.
- 343 Council of Sardica.
- 346 Return of Athanasius.
- 350 Revolt of Magnentius.
- 352 Battle of Mursa.
- 355 Julian made Caesar for Gaul.
- 356 Third Exile of Athanasius.
- 357 Battle of Argentoratum.
- 359 Councils of Ariminum and Seleucia.
- 360 Mutiny at Paris : Julian proclaimed Augustus.  
Council of Constantinople.
- 361-363 Julian Emperor.
- 363-364 Jovian Emperor. Peace with Persia : cession of the five provinces.
- 364 Valentinian and Valens Emperors.
- 369 Count Theodosius in Britain
- 374-397 Ambrose Bishop of Milan.
- 375-383 Gratian Emperor in the West.
- 376 Passage of the Danube by the Goths.
- 378 Battle of Hadrianople (9 Aug.).
- 379-395 Reign of Theodosius.



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- 381 Council of Constantinople.  
 383-388 Usurpation of Maximus.  
 386 Execution of Priscillian.  
 390 Destruction of the Serapeum.  
 392 Revolt of Arbogast.  
 394 Battle of the Frigidus (6 Sept.).  
 395 Arcadius and Honorius Emperors.  
 400 Revolt of Gannas.  
 402 Battle of Pollentia.  
 406 Passage of the Rhine by the Germans (31 Dec.).  
 407 Withdrawal of the legions from Britain.  
 408-450 Reign of Theodosius II in the East.  
 408 Mutiny at Pavia. Execution of Stilicho.  
 410 Sack of Rome by Alaric (23 Aug.).  
 412 The Visigoths in Gaul.  
 418 Rescript of Honorius to Agricola.  
 425-455 Valentinian III Emperor in the West.  
 429 The Vandals in Africa.  
 430 Death of Augustine.  
 431 Council of Ephesus.  
 433 *Codex Theodosianus*. Legal separation of East and West.  
 439 Capture of Carthage by the Vandals.  
 440-461 Pope Leo I.  
 445 Edict of Valentinian III.  
 449 The *Latrocinium* at Ephesus.  
 c. 449 Traditional date of Hengest and Horsa.  
 450-458 Marcian Emperor in the East.  
 451 Council of Chalcedon.  
 Battle of the Mauriac Plain.  
 452 Destruction of Aquileia by Attila. Embassy of Pope Leo.  
 454 Assassination of Aetius.  
 455 Sack of Rome by Gaiseric.  
 457-461 Reign of Majorian in the West.  
 468 Failure of Basiliscus before Carthage.  
 472 Capture of Rome by Ricimer.  
 474-491 Zeno Emperor in the East.  
 476 Deposition of Romulus Augustulus.  
 Odoacer master of Italy till 493.  
 481 The *Henoticon* of Zeno. Schism in the Church.  
 481-511 Reign of Clovis.  
 486 Clovis defeats Syagrius.  
 491-518 Anastasius Emperor.  
 493-526 Reign of Theodoric in Italy.  
 507 Battle of Vouglé. Clovis conquers Aquitaine.  
 518 Justin Emperor. End of the Schism.  
 533 Conquest of Africa by Belisarius.  
 597 Landing of Augustine.  
 Death of Columba (9 June).